

STATEMENT OF CONSIDERATION RELATING TO

401 KAR 5:045 Not amended after comments

401 KAR 5:070 Not amended after comments

401 KAR 5:075 Amended after comments

Energy and Environment Cabinet
Department for Environmental Protection
Division of Water

I The public hearing on 401 KAR 5:045, 5:070, and 5:075, scheduled for March 23, 2010, at 5:00 p.m. at 300 Fair Oaks Road, was held and written comments were received during the public comment period.

II The following people attended the hearing:

Name and Title

Affiliation

Annette DuPont-Ewing, Executive
Director

Kentucky Municipal Utilities Association

Jack Bates, Attorney

The following people submitted written comments:

Name and Title

Affiliation

Lloyd R. Cress, Jr., Attorney

Kentucky Association of Manufacturers

Timothy J. Hagerty, Chair, Energy &
Environment Policy Council

Kentucky Chamber of Commerce

Jack Bender, Attorney

Kentucky League of Cities

III The following people from the promulgating administrative body responded to the written comments:

Name and Title

Affiliation

Peter T. Goodmann, Assistant Director

Division of Water

Jory Becker, Branch Manager

Division of Water

Abby Powell, Regulations Coordinator

Division of Water

IV Summary of Comments and Responses for 401 KAR 5:045, 5:070, and 5:075

(1) Subject Matter: Suspended Solids Requirements (5:045)

- (a) Comment: Jack Bender (Kentucky League of Cities)** Kentucky League of Cities asked the Division to clarify whether the deletion of Section 2(3), related to suspended solids requirements for wastewater stabilization ponds that are employed as the sole process for secondary treatment, will impact any existing municipalities in Kentucky.
- (b) Response:** The agency does not believe that any existing municipalities will be affected by the proposed amendments to Section 2(3) of this administrative regulation.

(2) Subject Matter: Secondary Treatment Standards for POTWs (5:045)

- (a) Comment: Jack Bender (Kentucky League of Cities)** Kentucky League of Cities would like the Division of Water to confirm that the proposed changes have no affect on secondary treatment standards that apply to POTWs.
- (b) Response:** The agency does not believe that the proposed changes to the regulation will have an affect on secondary treatment standards that apply to POTWs.

(3) Subject Matter: Using federal citations (5:070 and 5:075)

- (a) Comment: Jack Bender (Kentucky League of Cities)** Kentucky League of Cities is concerned that the wholesale incorporation by reference of U.S. EPA NPDES permit regulations regarding permit conditions, application review, and permit issuance procedures could have unintended impacts on KPDES permit applicants. The Division of Water should conduct a detailed review to determine whether there will be unintended consequences of this strategy.
- (b) Response:** Upon receipt of this comment, the Division of Water conducted another review of federal regulations cited in these administrative regulations. Upon this further review, the Division has amended references to the Environmental Appeals Board in 401 KAR 5:075 and deleted the federal citation to 40 C.F.R. 124.15 in Section 11 of 5:057.

(4) Subject Matter: 5:075, Section 11

- (a) Comment: Jack Bender (Kentucky League of Cities), Lloyd R. Cress (Kentucky Association of Manufacturers), Timothy J. Hagerty (Kentucky Chamber of Commerce)** The Division's proposed repeal of 401 KAR 5:075, Section 11, and adoption of 40 C.F.R. 124.15 regarding the issuance and effective date of permits would make significant changes in the existing KPDES permit program. KLC, KAM, and Kentucky Chamber urge the Division not to adopt the federal reference in place of existing language.
- (b) Response:** In the amended after comments 401 KAR 5:075, the agency struck the reference to 40 C.F.R. 124.15, and inserted a state-specific language regarding issuance and effective dates of permits.

(5) Subject Matter: Environmental Appeal Board (5:075)

- (a) Comment: Jack Bender (Kentucky League of Cities)** Kentucky League of Cities is concerned that the incorporation of federal regulations would result in federal Environmental Appeal Board rulings on permit issuance issues being applicable to the issuance of KPDES permits.

- (b) **Response:** The agency has amended the review procedures to cite 40 C.F.R. 124.5, except that appeals shall be heard as established in Section 13 of the administrative regulation. This restores the state-specific appeals process.

V Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The Division of Water reviewed the comments and will not be amending 401 KAR 5:045 or 5:070. As a result of comments received for 401 KAR 5:075, the Division of Water will be amending the administrative regulation as follows:

Page 4

Section 2

Line 7

After “effective July 1, 2009”, insert the following:

, except that appeals shall be heard as established in Section 13 of this administrative regulation

Page 15

Section 11

Lines 9 and 10

After “Effective Date of Permit.”, insert the following:

(1) After the close of the public comment period established in Section 5 of this administrative regulation, the cabinet shall make a determination to issue, deny, modify, revoke and reissue, or revoke a permit.

(a) The cabinet shall notify the applicant and each person who submitted written comments or requested notice of that determination.

(b) The notification shall include reference to the procedures for appealing the decision.

(2) A final permit determination shall become effective thirty (30) days after the service of notice of the determination, unless:

(a) A later effective date is specified in the determination;

(b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation; or

(c) Comments did not request a change in the draft permit, and if that occurs, the permit shall become effective immediately upon issuance.

(3)(a) The determination, which is a condition precedent to demanding a hearing under KRS 224.10-420(2) and Section 13 of this administrative regulation, shall be the final permit decision.

(b) The thirty (30) day appeal period shall begin on the date the determination is entered by the cabinet and shall not begin on the date the permit becomes effective.

Delete the remainder of Section 11.